***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION Nos.1430 & 5769 OF 1997

% 6-03-2006

Between:

Dadisetti Pandavulu & another.

…Petitioners

And

The Mandal Revenue Officer, Devipatnam,

East Godavari District & others

…Respondents

! COUNSEL FOR PETITIONERS: Mr.G.Dharma Rao

^ COUNSEL FOR RESPONDENTS: G.P.for Revenue

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> Head Note:

? CITATIONS:

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COMMON ORDER:

The petitioners own agricultural land in Indukuru village of Devipatnam Mandal, East Godavari District, in various survey numbers. The village is within the scheduled area. It is stated that the land was originally owned by Smt.Badireddi Parvathamma, and she mortgaged it, in the year 1916, to one Smt.Kudapa Lakshmamma.

Kudapa Laxmamma filed O.S.No.53 of 1923, before the Special Assistant Agent, Reddypolavaram, for redemption of the mortgage, and in pursuance of a decree passed therein, the suit land was put to auction by the Agency Court, in the year 1923. One Sri Nagulapati Venkata Subba Rao, a non-tribal, purchased the said land. The predecessors in title, of the petitioners herein, purchased different extents of land from Venkata Subba Rao.

The land in question was part of an estate, which stood abolished, under the Andhra Pradesh (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Act, 1948 (for short
"the Act"). A special set of regulations was framed in respect of Estate lands in the scheduled areas, *viz*, the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation 1970, (for short "the Regulation"). The petitioners submitted applications before the Settlement Officer, Rajahmundry, the 2nd respondent herein, for grant of ryotwari patta. The applications were rejected, through order dated 25.8.1977. There upon, the petitioners filed appeals before the Director of Settlements, the 3rd respondent herein, under Section 9(3) of the Regulation. The appeals were rejected, through orders dated 22.8.1983. Further appeals, under the same provision, were preferred to the Commissioner of Settlements, the 4th respondent herein, and they too were rejected, vide order dated 7.12.1996. Hence, these writ petitions.

The petitioners contend that themselves and their predecessors in title, are in continuous possession of the land, for the past several decades, and that their claims were rejected on totally untenable and non-existent grounds.

Learned counsel for the petitioners submits that the view taken by respondents 2 to 4 that the petitioners are under obligation to prove that the land was not in possession of any tribal, ever since 1916, cannot be sustained in law. He further contends that the petitioners proved the ingredients of Section 7 of the Regulation, and as such, they were entitled to be granted ryotwari pattas.

Learned Government Pleader for Revenue submits that the petitioners failed to prove their continuous possession over the land in question. He further submits that in the matter of grant of pattas in scheduled areas in favour of the tribals, certain special conditions are required to be complied with, and that the petitioners did not prove compliance.

Under the Act, the estates covered by it stood abolished, with effect from the notified date. For the estates, situated in scheduled areas, the Regulation was enacted in the year 1970. The Act, as well as the Regulation, provide for grant of ryotwari pattas, in respect of the land covered by estate. However, the parameters for grant of ryotwari pattas, under them, differ from each other. In addition to proving the possession over the land, as on the notified date, a ryot, in respect of a land situated in scheduled area, is required to prove certain additional factors. The same is evident from Section 7 of the Regulation. It reads as under:

> "(1) Every ryot in the Scheduled Areas to which this Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands which were proper which ought to have been properly included in his holding and which are not lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the state relating to grant of ryotwari patta.
>
> Provided that in the case of lands in the estates which have been taken over under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 a person who would be entitled to a ryotwari patta under that Act shall be granted a patta, if the lands have been continuously in the occupation of that person from the notified date;
>
> Provided further that in respect of lands other than those to which a person is entitled to a ryotwari patta under the first proviso, no ryot who is not a member of the Scheduled Tribes shall be entitled to a ryotwari patta in respect of cultivable land unless-
>
> a. such a person had been in possession or in occupation of the land for a continuous period of not less than eight years immediately before the commencement of this Regulation;
>
> b. such possession or occupation shall not be void or illegal under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, or any other law for the time being in force."
>
> **Explanation**:- In this sub-section, the expression "notified date" shall have the meaning assigned to it in clause (10) of Section 2 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.
>
> (2) No lessee of any lanka land and no person to whom a right to collect the rent of any land has been leased before the coming into force of this Regulation including an ijaradar in respect of such land under this Section".

In a way, it can be said that conditions (a) & (b) incorporated under second proviso to Section 7, are typical to lands in scheduled areas.

The petitioners claim title on the basis of sale deeds, commencing from 1923 onwards. They also plead that they are in continuous possession of the land. In fact, against the petitioner in W.P.No.1430 of 1997, the Special Deputy Collector (Tribal Welfare), Rampachodavaram, initiated proceedings under A.P (Scheduled Areas) Land Transfer Regulation 1 of 1959, in LTRP No.324 of 1980. He dropped the same, vide his order dated 20.7.1981. The genesis for the title of the petitioners was traced and their possession and title over the land was upheld.

From a perusal of the record placed before this Court, it is evident that the respondents 2 and 3 have taken the view that the petitioners have to prove not only that they are in continuous possession of the land from 1.7.1946, but also that the land was never in possession of the tribal from the year 1917. Para 7 of the order passed by the Director of Settlement reads as under:

> "The appellant is non-tribal and as such he has to prove that he has been in continuous possession and enjoyment of the schedule land from 1.7.1946 and that the schedule land was never in possession of a tribal at any time from 1917 when Act 1/1917 came into force as required under Section 7 of the A.P.Regulation 2/70."

To the extent the 3rd respondent insisted that the petitioners must prove the possession and enjoyment over the schedule land from 1.7.1946, no exception can be taken. In fact, the petitioners have clearly pleaded and placed the necessary material to establish their possession, and if at all any doubt existed on this, the order passed in LTRP No.324 of 1980 clears it. However, the insistence that the petitioners should have proved that the land was never in possession of a tribal at any time from 1917, is clearly outside the scope and purview of the Regulation. Though the 3rd respondent tried to treat it as a requirement under Section 7 of the Regulation, it is difficult to discern any such requirement from the Section.

Respondents 2 to 4 proceeded to discuss about the validity of the transaction of mortgage by the original owner and subsequent sale by the vendors of the petitioners, in a court auction. Firstly, the transactions were more than 30 years old. Secondly, there does not exist any basis or justification, to suspect the genuinety of a sale, affected by an Agency Court, in a mortgage suit. A presumption needs to be drawn under the Evidence Act, as to the genuinety of such transactions. At any rate,

there was no rival claim before the respondents in relation to the said land, from any one.

For the foregoing reasons, the writ petitions are allowed as prayed for. There shall be no order as to costs.

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6th March 2006

Note: L.R. copies be marked.

(B/o)

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